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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/090,265	03/04/2002	Charles S. Zappala	10194.8041.US01	6538
30083	7590	02/23/2005	EXAMINER	
PERKINS COIE LLP/AWS P.O. BOX 1247 SEATTLE, WA 98111-1247			PHAN, HUY Q	
			ART UNIT	PAPER NUMBER
			2687	

DATE MAILED: 02/23/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/090,265

Applicant(s)

ZAPPALA, CHARLES S.

Examiner

Huy Q Phan

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 16 December 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☐ Claim(s) \_\_\_\_\_ is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 6-11 and 23-25 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 04 March 2002 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date 04/08/03, 04/28/03, 08/21/02 & 05/06/02
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

## **DETAILED ACTION**

### ***Election/Restrictions***

1. Applicant's election with traverse of Group II, Claims 6-11 and 23-25 in the reply filed on Dec. 16, 2004 is acknowledged.

The traversal is on the ground(s) that the restriction is inappropriate because the inventions are not so unrelated or separately usable subcombinations.

This is not found persuasive because the present application appears containing two subject matters separately. Invention I (Claims 1-5 and 12-22) includes a subject matter wherein location monitoring of a radio telephone is controlled by a specific signal asking therefor, while invention II (Claims 6-11 and 23-25) includes separately a subject matter wherein determining the position of a radiotelephone specifically based on enhanced 911 service technology.

The requirement is still deemed proper and is therefore made FINAL.

### ***Drawings***

2. The drawings are objected to as failing to comply with 37 CFR 1.84(p)(5) because they include the following reference character(s) not mentioned in the description: in figure 2, features 210, 212 and 214 are not found in the specification.

Corrected drawing sheets in compliance with 37 CFR 1.121(d), or amendment to the specification to add the reference character(s) in the description in compliance with 37 CFR 1.121(b) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being

amended. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

3. The drawings are objected to as failing to comply with 37 CFR 1.84(p)(5) because they do not include the following reference sign(s) mentioned in the description: In specification, page 7, features 204 and 206 are not found in the drawing.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

***Claim Rejections - 35 USC § 102***

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 6-9 and 23-25 are rejected under 35 U.S.C. 102(e) as being anticipated by Havinis et al. (US-2002/0077116).

Regarding claim 6, Havinis et al. disclose a mobile unit (fig. 4, MS 20) for use in a wireless communications network (fig. 3), comprising:

an operating system (fig. 4, MS 20), including hardware and software that performs communications functions ([0033]-[0035]);

call quality data components (fig. 4, Module 260) to determine at least one call quality metric [0038]; and

a location system (fig. 4, PMM 220 and LCM 230), comprising hardware and software ([0015]-[0016]) that determine a location of the mobile unit in compliance with enhanced 911 ("E911") requirements (system in fig. 1 and see [0008]), wherein the location system, receives a query (figs. 3-5, position request P.R. 285) from a switch (fig. 3, MSC 14), wherein the query includes a request for call data and location data (a time stamp of the time and date the positioning request, the number and/or duration and positioning information; see [0035]-[0038]), wherein the location data comprises a location of the mobile unit in compliance with E911 requirements (system in fig. 1 and see [0008]); and transmits the location data and the call quality metric to the switch in response to the request [0038].

Regarding claim 7, Havinis et al. disclose the mobile unit of claim 6, wherein the location system includes global positioning system equipment (fig. 7 and [0029]).

Regarding claim 8, Havinis et al. disclose the mobile unit of claim 6, further comprising a performance monitoring system that monitors and stores multiple network performance characteristic measurements [0038].

Regarding claim 9, Havinis et al. disclose a method for analyzing a wireless communications network in real-time (fig. 3 and [0015]-[0016]), comprising:

receiving performance monitoring criteria ([0035]-[0038]);

using the performance monitoring criteria to query (figs. 3-5, position request P.R. 285) at least one mobile unit (fig. 3, MS 20) in the wireless communications network ([0035]-[0038]);

receiving at least one response to the query, including call data and location data (a time stamp of the time and date the positioning request, the number and/or duration and positioning information; see [0035]-[0038]); creating a link between the call data and the location data (figs. 3-5, position request P.R. 285); storing the call data, the location data, and the link in a server ([0007]); accessing the server to retrieve the call data, the location data, and the links ([0041]-[0046]); using the call data, the location data and the links to create at least one performance report ([0045]-[0052]), including a graphical report that displays the call data as a function of location and time ([0045]-

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[0052]), wherein the location is a location of a mobile unit with a resolution required by enhanced 911 ("E911") services (system in fig. 1 and see [0008]), and the time is a time at which the call data was created and at which the mobile unit was in the location ([0035]-[0038]).

Regarding claim 23, Havinis et al. disclose a wireless communications system (system in fig. 1 and see [0008]), comprising:

- a mobile unit (fig. 3, MS 20), wherein the mobile unit includes,
- a performance monitoring means that records multiple network performance characteristics (fig. 4, MS 20 and [0033]-[0038])); and

- a location means (fig. 4, PMM 220 and LCM 230) that creates location data describing a location of the mobile unit with a resolution required by enhanced 911 ("E911") services (system in fig. 1 and see [0008]); and

- a data processing means (fig. 4, Module 260) in communication with the mobile unit, comprising, means for using the network performance characteristics and the location data to create at least one performance report ([0035]-[0038]), including a graphical report that displays the call data as a function of location and time ([0045]-[0052]), wherein the location is the location of the mobile unit at the time the network performance characteristics were recorded ([0015]-[0016]).

Regarding claim 24, Havinis et al. disclose the wireless communications system of claim 23, wherein the data processing means further comprises: means for receiving

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performance monitoring criteria ([0035]-[0038]); means for using the performance monitoring criteria to query (a time stamp of the time and date the positioning request, the number and/or duration and positioning information; see [0035]-[0038]) the mobile unit ([0035]-[0038]); and means for receiving a response to the query ([0035]-[0038]), wherein the response includes the network performance characteristics and the location data ([0045]-[0052]).

Regarding claim 25, Havinis et al. disclose the wireless communications system of claim 23, wherein the data processing means further comprises: means for creating a link between the network performance characteristics and the location data (figs. 3-5, position request P.R. 285); means for storing the network performance characteristics, the location data, and the link in a server ([0007]); and means for retrieving the network performance characteristics and the location data ([0041]-[0046]) in response to a request to create at least one performance report ([0045]-[0052]).

### ***Claim Rejections - 35 USC § 103***

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.



Claims 10 and 11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Havinis et al. in view of Campbell (US-6,771,977).

Regarding claim 10, Havinis et al. disclose the method as recited in the rejection of claim 9. But, Havinis et al. do not particularly show automatically adjusting parameters of the wireless communications network based on the at least one performance report and predetermined performance guidelines. However in analogous art, Campbell teaches automatically (inherently for any operation without operator) adjusting parameters of the wireless communications network in responding the emergency call (fig. 2, col. 3, line 54-col. 4, line 19); therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the system of Havinis et al. as taught by Campbell for purpose of improving advantageously the enhanced 911 service of communication system.


Regarding claim 11, Havinis et al. and Campbell disclose the method as recited in the rejection of claim 10. Campbell further discloses wherein the parameters include power settings of network components, and frequency assignments (col. 2, lines 23-47).

### ***Conclusion***

6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Huy Q Phan whose telephone number is 703-305-9007. The examiner can normally be reached on 8AM-6PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Kincaid G Lester can be reached on 703-306-3016. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
**SONNY TRINH**  
**PRIMARY EXAMINER**

Examiner: Phan, Huy Q.

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Date: Feb. 12, 2005